IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1831 OF 2005.

M/s.Madhav Structural Engineering Ltd. & Ors. ... Applicants.

V/s.

The State of Maharashtra & Anr. ... Respondents.

Shri R.D.Chheda for Applicants.

Shri A.S.Shitole, APP for the State.

CORAM : V.M.KANADE,J
DATE : MARCH 22, 2005.

P.C. :

1. Heard the learned counsel for the applicants and the learned APP for the State.

2. This is an application filed by the applicants who are original Accused No.1 to 4 for quashing issuance of process by the Magistrate on the complaint filed under section 138 of the N.I.Act and also for quashing the non-bailable warrant issued by the Metropolitan Magistrate on 24/2/2005 against the Applicant Nos. 3 and 4.

3. The learned counsel for the applicants submits that two cheques were issued by the applicants to the

complainant in respect of the transaction between the two parties. It is submitted that the complainant discounted two cheques presented by the original accused No.2. It is submitted that therefore, cause of action so far as complaint is concerned would arise only against accused No.5, 6 and 7 and not against the present applicants. I am unable to accept the said submission. The question whether the complainant has stepped into shoes of accused No.5,6 and 7 as a holder in due course or not, will have to be decided after evidence is led in the trial court by both the parties. The said submission cannot be accepted at this stage.

4. So far as second submission is concerned, it is stated in paragraph 6 and 7 of the petition that the applicant Nos. 3 and 4 had gone to their native place to attend some religious ceremony and could not return on 24/2/2005. So Non-bailable warrants against them were issued. Ordinarily, application for cancellation of warrant should be filed before the trial court. It is submitted that the applicants have apprehension that they will be taken into custody. In view of this, non-bailable warrants against the applicant nos. 3 and 4 dated 24/2/2005 are cancelled.

It is however, clarified that if the applicants do not remain present in the trial court for sufficient cause, the learned Magistrate is at liberty to issue Non-bailable warrant if necessary. The application is disposed of in the above terms.

(V.M.KANADE,J)